**LOH JUE TEE & ANOR.**

**v.**

**LOW CHICK SUM**

HIGH COURT, SINGAPORE
CHAN SEK KEONG J
[DISTRICT COURT APPEAL NO. 87 OF 1987]
28 JULY 1989

***TORT:*** *Negligence - Claim for damages for personal injuries - Finding of fact by trial Judge - Inferences from primary facts - Whether an appellate Court will disturb the findings of the fact of trial Judge.*

The appellants sued the respondent for damages for personal injuries suffered by the appellants as a result of collision. The claim was dismissed. The appellants appealed to the District Judge.

The main issue was, when will an Appellate Court disturb the findings of fact of the trial Judge and consequently whether the trial Judge drew the correct inference.

**Held:**

**[1]** It is well established that an Appellate Court will not normally disturb the findings of fact by the trial Judge based upon an evaluation of the oral testimony of the parties and the witnesses as he is in a far better position to assess their credibility having seen and heard them.

**[2]** However, where the findings of fact on which the decision is based are themselves inferences from primary facts, the Appellate Court is in as good a position as the trial Judge to form a view as to what happened.

**[3]** The correct inference to draw from the evidence was that on a balance of probabilities the respondent had suddenly swerved into the entrance of NATC and caused the 2nd appellant to collide into the van.

*[Appeal allowed with costs.]*

**Case referred to:**
*Foong Yit Yoon v. Yap Tiam & Anor. [1963] 29 MLJ 104*

**Legislation referred to:**
Highway Code [Sing], r. 74

*For the appellants/plaintiffs - Johnny Seah*
*For the respondent/defendant - Brij Raj Rai*

**JUDGMENT**

**Chan Sek Keong J:**

This is an appeal by the plaintiffs against the decision of the District Judge dismissing the plaintiffs' claim against the defendant for damages for personal injuries suffered by the plaintiffs as a result of a collision between a pick-up van No.GF 6713Y driven by the defendant and a motor cycle No. AZ 3705 ridden by the 2nd plaintiff with the 1st plaintiff as pillion rider.

The collision occurred along Clementi Road on 28 August 1982 at about 4.30 pm near the entrance to Ngee Ann Technical College (NATC). At that junction, Clementi Road was a dual carriageway with 3 lanes going towards Bukit Timah Road and the other 3 lanes going in the opposite direction.

Both the 2nd plaintiff and the defendant reported the accident separately to the traffic police a few hours after the accident. The 2nd plaintiff's report was as follows:

> On 28 August 1982 at about 1630 hours at Clementi Road, I was riding my motor-cycle carrying one pillion (tel: 4684659), at a speed of about 60 km/h, travelling at the left lane of the road behind a pick-up GF. 6713 turned without giving signal and I could not avoid but collided onto the front left side of the pickup.
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> The motor-cycle fell and my pillion was injured. Ambulance conveyed us to Alexandra Hospital. Nobody was injured in the pick-up. The pick-up was dented slightly on the left front part. No rain and visibility clear. That is all.

The defendant's report was as follows:

> On 28 August 1982 at about 4.15 pm, I am driving along Clementi Road intending to make a left turn to Ngee Ann College.
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> Whilst driving, before I made a left turn of Ngee Ann College, I switched on my left signal indicator, suddenly a motor-cycle AZ3705C came on my left side, whilst I was about to turn, the said motor-cycle grazed onto the left side of my motor-pickup.
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> As a result the motor-cyclist's pillion was injured, on the hand and right leg. My motor-pickup left side was damaged, the side mirror broken.

At the trial, the testimony of the 2nd plaintiff was substantially the same as what he had said in his police report save for the elaboration that the traffic was moderate and that the pick-up van was travelling in the middle lane of the 3-lane road going towards Bukit Timah Road when the van turned suddenly into the entrance into NATC. He also said that he was not trying to overtake the van and that he could not remember which part of the van he collided into. He was asked to mark (which he did) the point of impact with an "X" on the police sketch plan of the scene of accident.

The 1st plaintiff, in his testimony, corroborated the evidence of the 2nd plaintiff. He remembered seeing a blue shadow suddenly moving across the path of the motor-cycle.

The defendant testified that when he was approaching NATC, he signalled, looked at the rear view mirror and then turned left into the entrance to NATC, that as he was doing so, the motor-cycle collided into his van. He also said that before he made the turn, he was travelling on the innermost left lane. Under cross-examination, he claimed (a) that he was travelling on this lane all the way after turning into Clementi Road from Jalan Ahmad Ibrahim; (2) that he switched on the indicator light about 4-5 car lengths from the entrance into NATC; (3) that on looking at his rear mirror he saw a motor car, but not the motor cycle, behind him travelling in the same lane; and (4) that he did not look at the left wing side mirror before he turned.

The defendant had two passengers in his car at the time of the accident. One of them appeared as a witness to testify (1) that the van had travelled for about 2 miles on the extreme left lane whilst keeping to the centre of the lane; and (2) that the defendant did signal before turning left into NATC as he heard a 'tick tick' sound.

At the end of the trial, the District Judge found that the defendant was not negligent and that the 2nd plaintiff was wholly to blame for the collision. In his grounds of decision, he gave the following reasons for his finding:

> The plaintiffs and defendant told conflicting stories. Each party was trying to put the blame on the other. In order to verify the evidence the Court had to rely on evidence such as the police report. The second plaintiff stated in his report that he was travelling on the left lane of the road behind a pickup GF 6713Y. The vehicle turned without giving signal. The defendant said that while he was about to turn the motor cycle grazed his left side. He had switched on his left indicator.
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> From the above it clearly showed that the second plaintiff was following behind the defendant. Both he and the defendant were travelling on the left lane. While the defendant was turning the plaintiff must have grazed him and then landed in the position marked "M" There was a scratch mark leading to "M". The second plaintiff confirmed under cross-examination that the collision took place at the point "X". Obviously, the second plaintiff was trying to overtake the defendant on the left side. From the point of impact and the scratch mark the collision could not have happened in the way described by the second plaintiff, otherwise on a head to side collision the motor cycle would remain at the point of collision. This confirmed that the defendant did not suddenly swerve left from the centre lane to the left lane as alleged by the second plaintiff. Hence, the second plaintiff was the sole cause of the accident. He must have tried to overtake the defendant who was turning to its left, then grazed the defendant's vehicle and landed on point marked "M".

Counsel for the plaintiffs have submitted that the findings of fact of the District Judge were inferential findings and that he was in error in making such findings.

It is well established that an appellate Court will not normally disturb the findings of fact of the trial Judge based upon the evaluation of the oral testimonies of the parties and their witnesses as he in a far better position to assess their credibility having seen and heard them. However, where the findings of fact on which the decision is based are themselves inferences from primary facts, the appellate Court "is in as good a position, or as bad a position, as the trial Judge to form a view as to what happened" (per Thomson CJ in *Foong Yit Yoon v. Yap Tiam & Anor.* [1963] 29 MLJ 104 at p.108).

Counsel for the plaintiffs submitted before me that the District Judge's finding that the defendant was not negligent was based not on his assessment of the truth or otherwise of the parties who gave evidence, he being unable to come to any conclusion as to whom to believe, but primarily on inferences drawn from the police reports of the 2nd plaintiff and the defendant.

I agree. The extract I have quoted from the trial Judge's Grounds of Decision shows that the findings of the trial Judge upon which he found the 2nd plaintiff was solely to blame for the collision were as follows: (1) the pickup van was on the extreme left lane of the road and the 2nd plaintiff was following it on the same lane; (2) the collision occurred at the point "X" on the sketch plan as marked by the 2nd plaintiff; (3) from the point of impact and the scratch mark leading to the final position of the motorcycle, "M", the collision could not have happened in the way described by the 2nd plaintiff, i.e., on a head to side collision, as the motorcycle would have stopped dead at the point of collision; in other words, it was not a head to side collision; (4) from this, it would follow that the motorcycle must have been trying to overtake the pickup van; (5) therefore the van did not suddenly swerve left from the centre lane.

Every single finding of fact set out above is an inferential fact. This Court is therefore in as good a position as the trial Judge to assess the correctness of these findings of fact. The trial Judge did not believe the 2nd plaintiff's version of how the collision occurred primarily because it could not have occurred in the manner described by him having regard to the point of impact as marked by him on the police sketch plan. In my view, the trial Judge was wrong in accepting as correct the point of impact as marked by the 2nd plaintiff. The trial Judge should have, in the light of the other objective evidence, considered whether the 2nd plaintiff's account was consistent with the other objective evidence. The 2nd plaintiff obviously had a faint recollection of an event which had occurred more than 5 years earlier. This is proved by his candid admission in his evidence in chief that he could not even remember where his motor cycle had collided into the pick-up van.

To make it easier to follow my analysis, I annex hereto a copy of the sketch plan. In my view, the point marked "X" could not be the point of impact because it is well beyond the point at which the van was damaged. According to the report of the traffic police who inspected the scene of the accident as well as the two vehicles immediately after the accident, the pickup van was damaged in three places viz. (1) the front rearside door dented; (2) front rearside bumper dented; and (3) rearside wing mirror dented. It must therefore follow that the point of impact was at a spot before the spot marked "X" The position of the van as shown in the sketch plan merely showed its position after and not before the collision. The van had come to a stop after the collision but it is a scientific fact that no moving force like a motor vehicle in motion, can stop dead unless it meets an irresistible force, even if its brakes are 100% effective. The 2nd plaintiff's marking should have been rejected as an obvious error. It follows that the 2nd plaintiff's description that the collision was a head to side collision was consistent with the objective evidence. In fact, and this was also ignored by the District Judge, the defendant in his police report had also, like the 2nd plaintiff, made a tick against the printed description "head to side" collision.

On this basis, how did the collision occur? It could only have happened if the van turned into the path of the motor cycle. That this was how the accident occurred was confirmed by all the witnesses including the parties to the action. The question is whether the 2nd plaintiff attempted to overtake the defendant, as found by the District Judge, or whether the defendant turned his van suddenly into the entrance of NATC.

In my view, any finding on this is dependent on the relative probabilities of the testimonies of the parties and their witnesses in the light of such other objective evidence as may be relevant. At the entrance to NATC, the width of the 3-lane road was 3.90 m. The width of the van was 1.60 m. The motorcycle was not measured but its width must have been 1-2 feet. If, as was alleged by the defendant's witness, the van had been travelling in the centre of the left lane all the way from Jalan Ibrahim up to the point of collisions, that would leave to a vehicle following the van a free passageway between the curb of the road and the van of about 1.15 m. Therefore, if the 2nd plaintiff had been trying to overtake the van, he was doing an extremely hazardous and reckless act. There is no basis for coming to this conclusion. If he had wanted to overtake, it would have been easier and safer to overtake on one of the other two outer lanes.

However, the District Judge in effect came to this conclusion by finding that the defendant was travelling on his innermost left lane because the 2nd plaintiff had stated in his police report that prior to the accident, he was travelling behind the van. This inference is not irresistible. If X says that he is travelling on the left lane behind Y who says that he is travelling on the left lane, both X and Y would be travelling on the left lane if both are

found to be telling the truth. In this case, the 2nd plaintiff testified that the defendant was travelling in the centre lane. The defendant, of course, denied this and said that he was travelling on the left land. *But,* the District Judge made no finding as to who was telling the truth. He merely inferred from these two statements that both of the 2nd plaintiff and the defendant were travelling on the same lane.

Now, of course, the word "behind" is ambiguous when used to describe, a vehicle following another vehicle on a road with more than one lane going in the same direction. In the present case, it was used by an English speaking constable in interpreting the words of the 2nd plaintiff spoken in a different language. In Court, the 2nd plaintiff had explained what he meant when he testified that he was behind the van which was travelling in the centre lane. There is no inconsistency between this statement and what he had said in his police report. The District Judge should have made a finding as to where the defendant was travelling just before the collision.

What then was the probability, on the evidence, of the defendant having been travelling on the innermost left lane as he had alleged? Here, the District Judge has failed to take into account the evidence of the defendant on a related point. The defendant admitted that when he looked at the rear mirror he never saw the motorcycle. There are only two possible reasons to explain why he did not see the motorcycle. The first is that he never looked into the rear mirror at all before turning. The second is that he looked but since the motor cycle was travelling on his left, he could not see the 2nd plaintiff. If the first explanation is correct, the defendant was lying. If the second explanation is correct, the more probable inference would be that the defendant was then travelling on the centre lane and the 2nd plaintiff on the inner lane. That would explain why the defendant never saw the motor cycle. In my view, that is certainly a more probable explanation than to infer that the 2nd plaintiff was doing a dangerous act by riding side by side the defendant's motor van and trying to overtake the defendant.

For these reasons, I have come to the conclusion that the correct inference to draw from the evidence was that, on a balance of probabilities, the defendant had suddenly swerved left from the middle lane into the entrance of NATC and caused the 2nd plaintiff to collide into the van. In my view, the defendant was in breach of r. 74 of the Highway Code. He was wholly to blame for the accident.

The appeal is allowed with costs here and below. There will be judgment for the plaintiffs. As the trial Judge has not assessed damages, I remit the case back to him for such assessment.

Also found at [1990] 1 CLJ 381